IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONAS NO.1950 OF 2004
IN
SUIT NO.2383 OF 1994

Bank of Maharashtra. ....Plaintiffs.
Vs.
Posil Rolling Mills Ltd.
(in Liqn. and ors.) ....Defendants.
And
The Court Receiver,
High Court, Bombay. ....Respondents.

Mr. Prakik Sakseria i/by Little & Co. for the Plaintiffs.

Mr. D.R. Dhurat, 1st Asst. to Court Receiver.

CORAM : A.M. KHANWILKAR, J.
DATED : 14/6/2005

P.C.:

1. The counsel for the plaintiffs states that the relief as claimed in this application is only against the court receiver for which reason the presence of defendant Nos. 1 to 5 is not necessary. He therefore, prays that the plaintiffs may be permitted to delete the names of defendant Nos. 1 to 5 from the present chamber summons. That request is granted at the risk of the plaintiffs. Amendment to be carried out forthwith.

2. Heard counsel for the plaintiffs and the representative of the court receiver. The relief claimed in this chamber summons is confined to the deduction made by the court receiver in the sum of Rs.1,81,375/- towards the "commission on valuation". It is argued on behalf of the plaintiffs that, no tariff is provided in the Bombay High Court Original Side Rules,(Rule 591) in relation to deduction of fees under the head Commission on Valuation. Accordingly, it is argued that the court receiver's fees towards commission on valuation, as claimed by the office of the court receiver, will at best be governed covered by Clause(9) of Rule 591, which enables the court receiver to charge fees for any special work not provided in Clause Nos. 1 to 8 of the same rule.

3. Indeed, the fees under that head (Clause (9) of Rule 591) is to be decided by the court, on an application of the court receiver, as may be reasonable. In the present case, however, before deducting the amount towards Commission on valuation, the court receiver has not taken any prior directions from this court. Be that as it may, it is not in dispute that the sale of the subject property has been effected by private

negotiations by the plaintiff. There is nothing on record to indicate that the court receiver has taken any steps to effectuate the sale of the subject property.

4. The representative of the court receiver however, justifies the disputed amount of Rs.1,81,375/- towards Commission on Valuation on the basis of clause (4) occruing in Rule-591. However, to my mind, the said clause(Clause 4) deals with the fees to be charged on sale of property movable or immovable, which presupposes that the properties have been sold through the office of the court receiver. In the present case, as mentioned earlier, sale of property is by private negotiations held by the plaintiffs and that the office of the court receiver was no way concerned therewith. The Office of the court receiver has not taken any steps to effectuate the sale of the said property. Therefore, I find substance in the argument of the plaintiffs that at best the court receiver is entitled to charge fees under clause (9) occuring in Rule 591 of the rules.

5. As mentioned earlier, as no positive steps have been taken by the office of the court receiver for

the purpose of sale of the disputed property, in my view, it may be reasonable to permit the court receiver to deduct sum of Rs.50,000/-only towards Commission on Valuation. For, the abovesaid amount will be sufficient to cover the administrative expenses of the court receiver in relation to the present case. This direction is issued in terms of clause (9) occuring in Rule 591. The Court receiver shall refund balance amount of Rs.1,31,375/- to the plaintiffs. That be done within two weeks from today. Chamber summons disposed of accordingly.

(A.M. KHANWILKAR,J.)